

REMARKS

This Amendment is responsive to the Office Action mailed on May 5, 2005. Claim 18 is amended. Claims 5, 6, and 9-29 are pending.

Claims 5, 6, and 9-16 are allowed. The Examiner has indicated that claims 18 and 19 contain allowable subject matter.

Claims 17, 20-25 and 28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Fiz (US 6,241,731).

Claim 26 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiz in view of Bray (US 6,235,034).

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiz in view of Schenk (US 5,997,541).

Claim 29 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Fiz in view of Simonson (US 5,681,135).

Applicants respectfully traverse these rejections in view of the amended claims and the following comments.

Discussion of Amended Claims

Claim 18, which the Examiner indicates contains allowable subject matter, is amended into independent form by the addition of the subject matter of original claim 17. Accordingly, Applicants respectfully submit that claim 18, and claim 19 which depends therefrom, are in condition for immediate allowance.

Discussion of Fiz

Claims 17, 20-25 and 28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Fiz. This rejection is respectfully traversed. An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC

2003), and cases cited therein. As discussed in detail below, Fiz does not meet the requirements for an anticipation rejection.

Fiz discloses a plate and screw assembly for fixing bones. A fixation screw 1 has a lower threaded portion 2 and a head 3 with a slot 4 therein. Head 3 is also provided with a peripheral outer groove 9 defined between upper flange 5 and lower flange 6. The groove 9 receives with free rotary movement an annular projection 10 of a resilient cap 7 forming a resilient self-retaining means to retain the screw 1 in cavity 11 of plate 12 (Col. 3, line 66 through Col. 4, line 20).

With Applicants' invention according to claim 17, the bone screw is screwed into the bone segment through the screw hole of the clamping element until the snap catches interlock with the groove of the bone screw to secure the bone screw to the clamping element. In other words, according to Applicants' claim 17, interlocking of the snap catch with the groove is achieved by axial movement of the screw with respect to the clamping element.

In rejecting claim 17 in view of Fiz, the Examiner equates the cap 7 of Fiz to Applicants' claimed clamping element. Applicants respectfully submit that the Examiner has either misinterpreted the disclosure of Fiz or misinterpreted Applicants' claimed invention. Applicants' claimed clamping element has at least two snap catches protruding from a bone-contacting surface of the clamping element and spaced around an edge of a screw hole. In Fiz, the cap 7 is used for retaining the screw 1 in cavity 11 of plate 12. Cap 7 does not act as a clamping element for stabilizing bone segments and the cap 7 does not have bone contacting surfaces. Accordingly, the projections 10 of the cap 7 do not protrude from a bone contacting surface, as do the snap catches claimed by Applicants. In Fiz, it is plate 12 which acts as a clamping element for stabilizing of bone segments, not the cap 7. It is clear from the Figures of Fiz that the plate 12 does not have any snap catches protruding therefrom which interlock with a groove of the screw 1.

Assuming *arguendo* that the cap 7 of Fiz does act as a type of clamping element as asserted by the Examiner, this cap 7 of Fiz is not equivalent in function or operation to Applicants' claimed clamping element. The projections 10 of cap 7 of Fiz are not inserted into

the groove of the screw during the screwing of the screw into the bone segment. Instead, the cap 7 is placed on the screw head 3 and the projections 10 are interlocked with the groove 9 prior to screwing the screw 1 into the bone segment (see Figures 2A-2D and Col. 5, lines 1-35). In contrast to Fiz, with Applicants' claimed invention, the bone screw is screwed into the bone segment through the screw hole of the clamping element until the snap catches of the clamping element interlock with the groove of the bone screw to secure the bone screw to the clamping element. Thus, with Applicants' claimed invention, the snap catches interlock with the groove of the screw when the screw is screwed into the bone segment through the screw hole in the clamping element.

Further, the cap 7 of Fiz is split by slot 8, defining a C-shaped cap. The cap 7 is resilient and yields radially such that the screw 1 can be pushed through the slot 8 to fit the cap 7 onto the screw head 3 (Col. 4, lines 20-30). Therefore, the projections 10 of cap 7 interlock with groove 9 of the screw 1 when the cap 7 is applied to the screw 1 in a horizontal direction (i.e., by pushing the screw 1 horizontally into slot 8 of the cap 7). In contrast, with Applicants' claimed invention, the snap catches interlock with the groove of the bone screw when the screw is moved in an axial direction with regard to the clamping element. In particular, with Applicants' claimed invention, the snap catches interlock with the groove of the bone screw when the bone screw is screwed into the bone segment through the screw hole of the clamping element.

Accordingly, Fiz does not disclose or remotely suggest providing a clamping element for stabilizing bone segments, where the clamping element has at least two snap catches which protrude from a bone-contacting surface of the clamping element and are spaced around an edge of a screw hole, as claimed by Applicants. In addition, Fiz does not disclose or remotely suggest screwing of a bone screw into a bone segment through a screw hole of the clamping element until the snap catches of the clamping element interlock with a groove of the bone screw to secure the bone screw to the clamping element, as claimed by Applicants.

As Fiz does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(e) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc., supra*.

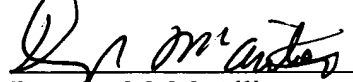
Applicants respectfully submit that the present invention is not anticipated by and would not have been obvious to one skilled in the art in view of Fiz, taken alone or in combination with any of the other prior art of record.

Further remarks regarding the asserted relationship between Applicants' claims and the prior art are not deemed necessary, in view of the foregoing discussion. Applicants' silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

Conclusion

The Examiner is respectfully requested to reconsider this application, allow each of the pending claims and to pass this application on to an early issue. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,



Douglas M. McAllister
Attorney for Applicant(s)
Registration No.: 37,886
Lipsitz & McAllister, LLC
755 Main Street
Monroe, CT 06468
(203) 459-0200

ATTORNEY DOCKET NO.: HOE-593.1

Date: July 20, 2005